



**CALIFORNIA EMERGENCY MANAGEMENT AGENCY
LOCAL ASSISTANCE MONITORING BRANCH
3650 SCHRIEVER AVENUE
MATHER, CALIFORNIA 95655
PHONE: (916) 845-8120 FAX: (916) 845-8380**

May 22, 2009

Ms. Judith Lieberman
Assistant City Administrator
City of Albany
405 Kains Avenue
Albany, California 94706

**SUBJECT: COMPLIANCE REVIEW REPORT
GRANT: FEMA-PDM07, OES PROJECT #10, FIPS #001-00674
SEISMIC UPGRADE OF FIRE STATION PROJECT**

Dear Ms. Lieberman:

The California Emergency Management Agency (CalEMA) (formerly the Governor's Office of Emergency Services (OES)) conducted a compliance field review on March 2 - 3, 2009 for the above referenced grant. The purpose of the review was to determine if your organization complied with applicable laws, regulations, guidelines and policies.

The above grant was reviewed for compliance with the administrative and fiscal requirements as outlined in the Office of Management and Budget (OMB) Circulars and the Code of Federal Regulations (CFR). Our scope included reviewing fiscal and accounting records for the grant, and the October 17, 2008 *Reimbursement Request Form* (for the period July 1, 2008 through September 30, 2008) and its supporting documentation. CalEMA also examined the City's purchasing policy and subcontract records. In general, the CalEMA monitors were pleased with the record keeping for this grant.

Executive Summary:

Grant Type(s): Pre-Disaster Mitigation Grant
Review Type: Compliance Field Review
Scope: Fiscal and Administrative
Review Period(s): July 1, 2008 – September 30, 2008

Findings Summary:

1. Contracts for design and construction and other business do not contain all federal required provisions.

Following are the detailed Findings resulting from the Compliance Field Review. Findings are discoveries that, within the context of a review process, represent operational deficiencies or errors, material program weaknesses or unacceptable program liabilities that could result in questioned grant costs, or collectively characterize a significant risk to program integrity.

SCHEDULE OF FINDING(S)

Finding #1: Contracts for design and construction and other business do not contain all federally required provisions.

Requirement:

44 CFR, Part 13, Subpart C, Section 13.36 (i)(1) – (13) requires contracts to contain certain provisions. It states, "*Contract provisions: A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section...*" and goes on to detail the required provisions.

Observation:

The two contracts reviewed were for Noll & Tam Consultants and the Sausal Corporation. There were several inconsistencies between the clauses in both contracts and several of the required clauses were missing. Below is a summary of each contract and their deficiencies.

The contract for Noll & Tam:

The blanket statement in Section 10 of this contract regarding compliance with all applicable laws is not sufficient to meet these provisions. The contract should also reference compliance with *the Contract Work Hours and Safety Standards Act, Clean Air Act, Clean Water Act and Environmental Protection Agency regulations*. The provision in Section 6 only discusses ownership of materials and not specifically *patents and/or copyrights*. All federally-funded contracts must also contain a provision regarding record retention that indicates all required records must be retained, "*... for three years after grantees or subgrantees make final payments and all other pending matters are closed.*"

The contract for Sausal Corporation:

This contract was missing a *termination for cause and for convenience* clause, as well as referencing compliance with provisions of the *Contract Work Hours and Safety Standards Act, Clean Air Act, Clean Water Act and Environmental Protection Agency regulations*. The clause which allows access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to their records needs to be included, as well as the provision regarding record retention that indicates all required records must be retained, "*... for three years after grantees or subgrantees make final payments and all other pending matters are closed.*"

Required Corrective Action:

Please submit a Corrective Action Plan (CAP) which describes how you will ensure that all required contract provisions are included in future federally-funded contracts.

ADVISORY RECOMMENDATION(S)

Following are additional Observations and Advisory Recommendations resulting from the compliance review:

- **Suspension and Debarment Verification Method:** In addition to self-certification by contractors and other government entities, CalEMA recommends using the federal Excluded Parties List System (which can be accessed at www.eppls.gov) to verify the eligibility of parties that negotiate contracts with the City. You may use 44 CFR Part 17 and the Federal Acquisition Regulations, Subpart 9.4 as a reference.

If the subrecipient desires to either challenge or disagree with any of the referenced Findings or Advisory Recommendations included in this report, the subrecipient must respond with their written comments to CalEMA, along with inclusive supporting documentation, to the address shown on the CalEMA letterhead, attention Local Assistance Monitoring Branch.

Since there are significant Findings included in this report, formal corrective action is required to ensure all issues are addressed in a timely manner. The attached document, "Subrecipient Corrective Action Procedures" provides detailed instructions for developing the CAP. This CAP should be submitted to CalEMA within 30 days from the date of this letter. You are encouraged to work with your assigned Program Manager, Ricardo Castillo, to develop your CAP.

Thank you for the courtesy and cooperation you extended CalEMA in completing this review. If you have any questions about this letter or the enclosures, please contact Don MacMillan at (916) 845-8107, or don.macmillan@calema.ca.gov.

Sincerely,



MICHAEL BALDWIN
BRANCH CHIEF

Enclosure

cc: Peggy Okabayashi, Assistant Secretary
Paul Ransom, CalEMA Hazard Mitigation Branch
Ricardo Castillo, CalEMA Hazard Mitigation Branch
Subrecipient File



**CALIFORNIA EMERGENCY MANAGEMENT AGENCY
LOCAL ASSISTANCE MONITORING BRANCH
3650 SCHRIEVER AVENUE
MATHER, CALIFORNIA 95655
PHONE: (916) 845-8120 FAX: (916) 845-8380**

August 11, 2009

Ms. Beth Pollard, City Administrator
City of Albany
405 Kains Avenue
Albany, CA 94706

SUBJECT: CORRECTIVE ACTION PLAN ACCEPTANCE – CORRECTED COPY
GRANT: FEMA-PDM07, OES PROJECT #10, FIPS #001-00674
SEISMIC UPGRADE OF FIRE STATION PROJECT

Dear Ms. Pollard:

The California Emergency Management Agency (CalEMA), formerly the Governor's Office of Emergency Services (OES), has reviewed the City of Albany's (City) corrective Action Plan (CAP) issued June 29, 2009 submitted in response to CalEMA's May 22, 2009 compliance review report of the above referenced grant.

The City's response indicates the City has taken appropriate action to ensure that all future federal contracts/awards for design and construction and other business will include all federally required provisions found in 44 CFR, Part 13, Subpart C, Section 13.36 (i) (1) – (13).

Based on your response, this deficiency should not become an issue with any future federal fund contract. CalEMA accepts the City's CAP and considers this finding resolved.

Thank you for your diligence in addressing these program deficiencies in a timely and effective manner. If you have any questions about this letter, please contact Don MacMillan at (916) 845-8107, or by electronic mail at don.macmillan@oes.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Catherine Lewis".

CATHERINE LEWIS
INTERIM BRANCH CHIEF

cc: Judith Lieberman, Assistant City Administrator
Peggy Okabayashi, CalEMA Assistant Secretary
Paul Ransom, CalEMA Hazard Mitigation Branch
Ricardo Castillo, CalEMA Hazard Mitigation Branch
Subrecipient File



City of Albany

405 KAINS AVENUE • ALBANY, CALIFORNIA 94706

001-00672-00
D 010225188

CAL EMA Compliance Review Report GRANT: FEMA-PDN07, OES Project #10, FIPS #001-00674 Seismic Upgrade of Fire Station Project

June 29, 2009



CITY ADMINISTRATOR
PH. (510) 528-5710
FAX (510) 528-5797

Sub-recipient Corrective Action Plan

CITY ATTORNEY
PH. (510) 528-5858
FAX (510) 526-9190

Review Finding #1: Contracts do not include all federally required provisions.

Contact Name and Title: Robert Zweben, City Attorney

Contact Information: Phone (510) 528-5858 or (510) 526-1669

Email: rzweben@albanyca.org

CITY CLERK
PH. (510) 528-5720
FAX (510) 528-5797

Corrective Action: Ensure that all required contract provisions are included in future federally funded contracts. Current language references only general compliance with "all state and federal laws." The City Attorney has reviewed and revised the City's existing standard contracts, with regard to the following: (See attached contracts).

CITY COUNCIL
PH. (510) 528-5720
FAX (510) 528-5797

COMMUNITY DEVELOPMENT & ENVIRONMENTAL RESOURCES

- Building
- Engineering
- Environmental Resources
- Maintenance
- Planning

PH. (510) 528-5760
FAX (510) 524-9359

FINANCE & ADMINISTRATIVE SERVICES

CITY TREASURER
PH. (510) 528-5730
FAX (510) 528-2743

FIRE & EMERGENCY MEDICAL SERVICES

PH. (510) 528-5771
FAX (510) 528-5774

PERSONNEL

PH. (510) 528-5714
FAX (510) 528-5797

POLICE

PH. (510) 525-7300
FAX (510) 525-1360

RECREATION & COMMUNITY SERVICES

1249 Marin Avenue
PH. (510) 524-9283
FAX (510) 528-8914
• Friendship Club/
Childcare Program
PH. (510) 559-7220
• Senior Center
PH. (510) 524-9122
FAX (510) 524-8940
• Teen Center
PH. (510) 525-0576

- References to compliance with the Contract Work Hours and Safety Standards Act, Clean Air Act, Clean Water Act and Environmental Protection Agency regulations
- Termination for cause and convenience clause (missing from one of the contracts, but present in the others, as well as in our general provisions.)
- Add a clause allowing access to the contractors records by the grantee, subgrantee, Federal grantor agency, Comptroller General of the U.S., or their duly authorized representatives, and ensure that this provision requires contractor to retain records for three years after grantees or subgrantees make final payments and all other pending matters are closed.
- Add "patents or copyrights" to Section 6 of the professional services contract.

Advisory Recommendation: Use the federal Excluded Parties List System (www.epls.gov) to verify the eligibility of parties negotiating contracts with the City to ensure that they have not been suspended or disbarred.

Contact Name and Title: Ana Bernardes, Project Manager

Contact Information: Phone (510) 524-3751 or (510) 524-9543

Email: abernardes@albanyca.org

Corrective Action: The City will include the use of the EPLS in the requirements for assessing the adequacy of responses to bids on federally funded projects. Form FHWA 1273 will be physically inserted into contract documents. This form has requirements for debarment and suspension certification.

Beth Pollard

6-26-09

510-528-5710

Signature of Authorized Agent

Date

Telephone

Beth Pollard, City Administrator

Name and Title of Authorized Agent

The City of Albany is dedicated to maintaining its small town ambience, responding to the needs of the community, and providing a safe, healthy environment now and in the future.



PRINTED ON RECYCLED PAPER

CONTRACT # _____
Agreement FOR Consultant SERVICES
BETWEEN
THE City OF ALBANY
AND

FOR PROJECT:

This Agreement FOR Consultant SERVICES ("Agreement"), is made and entered into this ____ day of _____ 20__ by and among the City of Albany a California charter city ("City") and _____ a [California corporation, partnership, LLC or LLP, or individual] ("Consultant").

In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

SECTION 1. TERM OF AGREEMENT.

Subject to the provisions of SECTION 19 "TERMINATION OF Agreement" of this Agreement, the term of this Agreement shall be for a period of one (1) year from the date of execution of this Agreement, as first shown above. Such term may be reduced or extended upon written agreement of both parties to this Agreement.

SECTION 2. SCOPE OF SERVICES.

Consultant agrees to perform the services set forth in EXHIBIT "A" "SCOPE OF SERVICES" and made a part of this Agreement.

SECTION 3. ADDITIONAL SERVICES.

Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to or outside of those set forth in this Agreement or listed in EXHIBIT "A" "SCOPE OF SERVICES", unless such additional services are authorized in advance and in writing by the City Council or City Administrator of City. Consultant shall be compensated for any such additional services in the amounts and in the manner agreed to by the City Council or City Administrator.

SECTION 4. COMPENSATION AND METHOD OF PAYMENT.

Subject to any limitations set forth in this Agreement, City agrees to pay Consultant the amounts specified in EXHIBIT "B" "COMPENSATION" and made a part of this Agreement. The total compensation, including reimbursement for actual expenses,

shall not exceed _____ dollars (\$ _____), unless additional compensation is approved in writing by the City Council or City Administrator.

Each month Consultant shall furnish to City an original invoice for all work performed and expenses incurred during the preceding month. The invoice shall detail charges by the following categories: labor (by sub-category), travel, materials, equipment, supplies, sub-consultant contracts and miscellaneous expenses. City shall independently review each invoice submitted by the Consultant to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. In the event that no charges or expenses are disputed, the invoice shall be approved and paid according to the terms set forth below. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Consultant for correction and resubmission.

Except as to any charges for work performed or expenses incurred by Consultant which are disputed by City, City will use its best efforts to cause Consultant to be paid within thirty (30) days of receipt of Consultant's invoice.

Payment to Consultant for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Consultant.

SECTION 5. INSPECTION AND FINAL ACCEPTANCE.

City may inspect and accept or reject any of Consultant's work under this Agreement, either during performance or when completed. City shall reject or finally accept Consultant's work within sixty (60) days after submitted to City. City shall reject work by a timely written explanation, otherwise Consultant's work shall be deemed to have been accepted. City's acceptance shall be conclusive as to such work except with respect to latent defects, fraud and such gross mistakes as amount to fraud. Acceptance of any of Consultant's work by City shall not constitute a waiver of any of the provisions of this Agreement including, but not limited to, SECTIONS 15 and 16, pertaining to indemnification and insurance, respectively.

SECTION 6. OWNERSHIP OF DOCUMENTS.

All original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files, patents, copyrights, and other documents prepared, developed or discovered by Consultant in the course of providing any services pursuant to this Agreement shall become the sole property of City and may be used, reused or otherwise disposed of by City without the permission of the Consultant. Upon completion, expiration or termination of this Agreement, Consultant shall turn over to City all such original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files, patents, copyrights, and other documents.

SECTION 7. CONSULTANT'S BOOKS AND RECORDS.

(a) Consultant shall maintain any and all documents and records demonstrating or relating to Consultant's performance of services pursuant to this Agreement. In addition, in the event that this Agreement is federally funded, Consultant shall maintain records and provide access to its records to the City, the Grantee, Federal Grantor Agency, Controller General of the United States, or their duly authorized representatives. Consultant shall maintain such records for three years after City, or Grantees, make final payments and all other pending matters are closed. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, or other documents or records evidencing or relating to work, services, expenditures and disbursements charged to City pursuant to this Agreement. Any and all such documents or records shall be maintained in accordance with generally accepted accounting principles and shall be sufficiently complete and detailed so as to permit an accurate evaluation of the services provided by Consultant pursuant to this Agreement. Any and all such documents or records shall be maintained for three years from the date of execution of this Agreement and to the extent required by laws relating to audits of public agencies and their expenditures.

(b) Any and all records or documents required to be maintained pursuant to this section shall be made available for inspection, audit and copying, at any time during regular business hours, upon written request by City or its designated representative. Copies of such documents or records shall be provided directly to the City for inspection, audit and copying when it is practical to do so; otherwise, unless an alternative is mutually agreed upon, such documents and records shall be made available at Consultant's address indicated for receipt of notices in this Agreement.

(c) Where City has reason to believe that any of the documents or records required to be maintained pursuant to this section may be lost or discarded due to dissolution or termination of Consultant's business, City may, by written request, require that custody of such documents or records be given to the requesting party and that such documents and records be maintained by the requesting party. Access to such documents and records shall be granted to City, as well as to its successors-in-interest and authorized representatives.

SECTION 8. STATUS OF CONSULTANT.

(a) Consultant is and shall at all times remain a wholly independent contractor and not an officer, employee or agent of City. Consultant shall have no authority to bind City in any manner, nor to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City.

(b) The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control.

Neither City, nor any elected or appointed boards, officers, officials, employees or agents of City, shall have control over the conduct of Consultant or any of Consultant's officers, employees or agents, except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that Consultant or any of Consultant's officers, employees or agents are in any manner officials, officers, employees or agents of City.

(c) Neither Consultant, nor any of Consultant's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Consultant expressly waives any claim Consultant may have to any such rights.

SECTION 9. STANDARD OF PERFORMANCE.

Consultant represents and warrants that it has the qualifications, experience and facilities necessary to properly perform the services required under this Agreement in a thorough, competent and professional manner. Consultant shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. In meeting its obligations under this Agreement, Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to those required of Consultant under this Agreement.

SECTION 10. COMPLIANCE WITH APPLICABLE LAWS, PERMITS, AND LICENSES.

Consultant shall keep itself informed of and comply with all applicable federal, state and local laws, statutes, codes, ordinances, regulations and rules in effect during the term of this Agreement. Further, in any federally funded contract, Consultant shall comply with all federal laws including, but not limited to, Contract Work Hours and Safety Standards Act, Clean Air Act, Clean Water Act, and Environmental Protection Agency regulations. Consultant shall obtain any and all licenses, permits and authorizations necessary to perform the services set forth in this Agreement. Neither City, nor any elected or appointed boards, officers, officials, employees or agents of City, shall be liable, at law or in equity, as a result of any failure of Consultant to comply with this section.

SECTION 11. NONDISCRIMINATION.

Consultant shall not discriminate, in any way, against any person on the basis of race, color, religious creed, national origin, ancestry, sex, age, physical handicap, medical condition or marital status in connection with or related to the performance of this Agreement.

SECTION 12. UNAUTHORIZED ALIENS.

Consultant hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, et M., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should any liability or sanctions be imposed against City for such use of unauthorized aliens, Consultant hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

SECTION 13. CONFLICTS OF INTEREST.

(a) Consultant covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Consultant's performance of services under this Agreement. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the City Administrator. Consultant agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

(b) City understands and acknowledges that Consultant is, or may be, as of the date of execution of this Agreement, independently involved in the performance of non-related services for other governmental agencies and private parties. Consultant is unaware of any stated position of City relative to such projects. Any future position of City on such projects shall not be considered a conflict of interest for purposes of this section.

SECTION 14. CONFIDENTIAL INFORMATION AND RELEASE OF INFORMATION.

(a) All information gained or work product produced by Consultant in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the City Administrator, except as may be required by law.

(b) Consultant, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the City Administrator or unless requested by the City Attorney of City, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives City notice of such court order or subpoena.

(c) If Consultant, or any officer, employee, agent or subcontractor of Consultant, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Consultant for any damages, costs and fees, including attorneys fees, caused by or incurred as a result of Consultant's conduct.

(d) Consultant shall promptly notify City should Consultant, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed thereunder. City retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

SECTION 15. INDEMNIFICATION.

(a) City and its elected and appointed boards, officials, officers, agents, employees and volunteers (individually and collectively, "INDEMNITEES") shall have no liability to Consultant or any other person for, and Consultant shall indemnify, defend, protect and hold harmless INDEMNITEES from and against, any and all liabilities, claims, actions, causes of action, proceedings, suits, damages, judgments, liens, levies, costs and expenses of whatever nature, including reasonable attorneys' fees and disbursements (collectively "CLAIMS"), which INDEMNITEES may suffer or incur or to which INDEMNITEES may become subject by reason of or arising out of any injury to or death of any person(s), damage to property, loss of use of property, economic loss or otherwise occurring as a result of or allegedly caused by the Consultant's performance of or failure to perform any services under this Agreement or by the negligent or *willful* acts or omissions of Consultant, its agents, officers, directors, subcontractors or employees, committed in performing any of the services under this Agreement.

(b) If any action or proceeding is brought against INDEMNITEES by reason of any of the matters against which Consultant has agreed to indemnify INDEMNITEES as provided above, Consultant, upon notice from City, shall defend INDEMNITEES at Consultant's expense by counsel acceptable to City, such acceptance not to be unreasonably withheld. INDEMNITEES need not have first paid for any of the matters to which INDEMNITEES are entitled to indemnification in order to be so indemnified. The insurance required to be maintained by Consultant under SECTION 16 shall ensure Consultant's obligations under this section, but the limits of such insurance shall not limit the liability of Consultant hereunder. The provisions of this section shall survive the expiration or earlier termination of this Agreement.

(c) The provisions of this section do not apply to CLAIMS occurring as a result of the City's sole negligence or *willful* acts or omissions.

SECTION 16. INSURANCE.

Consultant agrees to obtain and maintain in full force and effect during the term of this Agreement the insurance policies set forth in EXHIBIT "C" "INSURANCE" and made a part of this Agreement. All insurance policies shall be subject to approval by City as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the City Administrator. Consultant agrees to provide City with copies of required policies upon request.

SECTION 17. ASSIGNMENT.

The expertise and experience of Consultant are material considerations for this Agreement. City has an interest in the qualifications of and capability of the persons and entities who will fulfill the duties and obligations imposed upon Consultant under this Agreement. In recognition of that interest, Consultant shall not assign or transfer this Agreement or any portion of this Agreement or the performance of any of Consultant's duties or obligations under this Agreement without the prior written consent of the City. Any attempted assignment shall be ineffective, null and void, and shall constitute a material breach of this Agreement entitling City to any and all remedies at law or in equity, including summary termination of this Agreement. City acknowledges, however, that Consultant, in the performance of its duties pursuant to this Agreement, may utilize subcontractors.

SECTION 18. CONTINUITY OF PERSONNEL.

Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff assigned to perform the services required under this Agreement. Consultant shall notify City of any changes in Consultant's staff assigned to perform the services required under this Agreement, prior to any such performance.

SECTION 19. TERMINATION OF AGREEMENT.

(a) City may terminate this Agreement, with or without cause, at any time by giving thirty (30) days written notice of termination to Consultant. In the event such notice is given, Consultant shall cease immediately all work in progress.

(b) Consultant may terminate this Agreement at any time upon thirty (30) days written notice of termination to City. In the event such notice is given, Consultant shall cease immediately all work in progress.

(c) If either Consultant or City fail to perform any material obligation under this Agreement, then, in addition to any other remedies, either Consultant, or City may terminate this Agreement immediately upon written notice.

(d) Upon termination of this Agreement by either Consultant or City, all property belonging exclusively to City which is in Consultant's possession shall be returned to City. Consultant shall furnish to City a final invoice for work performed and expenses incurred by Consultant, prepared as set forth in SECTION 4 of this Agreement. This final invoice shall be reviewed and paid in the same manner as set forth in SECTION 4 of this Agreement.

SECTION 20. DEFAULT.

In the event that Consultant is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Consultant for any work performed after the date of default and may terminate this Agreement immediately by written notice to the Consultant.

SECTION 21. EXCUSABLE DELAYS.

Consultant shall not be liable for damages, including liquidated damages, if any, caused by delay in performance or failure to perform due to causes beyond the control of Consultant. Such causes include, but are not limited to, acts of God, acts of the public enemy, acts of federal, state or local governments, acts of City, court orders, fires, floods, epidemics, strikes, embargoes, and unusually severe weather. The term and price of this Agreement shall be equitably adjusted for any delays due to such causes.

SECTION 22. COOPERATION BY CITY.

All public information, data, reports, records, and maps as are existing and available to City as public records, and which are necessary for carrying out the work as outlined in the EXHIBIT "A" "SCOPE OF SERVICES", shall be furnished to Consultant in every reasonable way to facilitate, without undue delay, the work to be performed under this Agreement.

SECTION 23. NOTICES.

All notices required or permitted to be given under this Agreement shall be in writing and shall be personally delivered, or sent by telecopier or certified mail, postage prepaid and return receipt requested, addressed as follows:

To City:

City Administrator

To Consultant: _____

Notice shall be deemed effective on the date personally delivered or transmitted by facsimile or, if mailed, three (3) days after deposit of the same in the custody of the United States Postal Service.

SECTION 24. AUTHORITY TO EXECUTE.

The person or persons executing this Agreement on behalf of Consultant represents and warrants that he/she/they has/have the authority to so execute this Agreement and to bind Consultant to the performance of its obligations hereunder.

SECTION 25. BINDING EFFECT.

This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

SECTION 26. MODIFICATION OF AGREEMENT.

No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Consultant and by the City. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

SECTION 27. WAIVER

Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision, nor a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Consultant shall not constitute a waiver of any of the provisions of this Agreement.

SECTION 28. LAW TO GOVERN; VENUE.

This Agreement shall be interpreted, construed and governed according to the laws of the State of California. In the event of litigation between the parties, venue in

state trial courts shall lie exclusively in Alameda County. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Northern District of California, in San Francisco.

SECTION 29. CLAIMS.

All claims arising out of or related to this agreement must be presented not later than six (6) months after the accrual of the cause of action. Such claims shall be governed by the provisions of the Albany Municipal Code and such claims shall further be governed by the provisions of section 930.4 of the Government Code for the purposes of filing leave to present a later claim. It is further provided that subdivision (b) of section 911.4 sections 911.6 to 912.2, inclusive and section 946.6 are applicable to all such claims, and the time specified in this agreement shall be deemed the "time specified" in section 911.2 within the meaning of sections 911.6 and 946.6.

SECTION 30. ENTIRE AGREEMENT.

This Agreement, including the attached Exhibits "A" through "C", is the entire, complete, final and exclusive expression of the parties with respect to the matters addressed therein and supersedes all other agreements or understandings, whether oral or written, or entered into between Consultant and City prior to the execution of this Agreement. No statements, representations or other agreements, whether oral or written, made by any party which are not embodied herein shall be valid and binding. No amendment to this Agreement shall be valid and binding unless in writing duly executed by the parties or their authorized representatives.

SECTION 31. SEVERABILITY.

If any term, condition or covenant of this Agreement is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall not be affected thereby and the Agreement shall be read and construed without the invalid, void or unenforceable provision(s).

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

City OF ALBANY:

Consultant:

By _____, City Administrator

By _____
(Authorized Officer)

By _____
(Authorized Officer)

APPROVED AS TO FORM:

_____, City Attorney